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RECORDATION NO. 1 Filed 1988

June 1, 1988

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 1 5664-A
Filed 1988

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INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Interstate Commerce Commission
Recordations Unit
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Memorandum of Railcar Operating Lease Agreement dated May 5, 1988, between the following parties:

Lessor: Helm Financial Corporation
One Embarcadero Center
San Francisco, CA 94111

Lessee: Allied Corporation
c/o Fibers and Plastics Company
P. O. Box 131
Hopewell, VA 23860

The equipment involved in this document is as follows:

Equipment: 5, 4750 cf 100-ton Covered Hoppers
HLMX 330, 333, 339, 344, 345

Please file this document as a primary document.

TOC OFFICE OF
THE SECRETARY
JUN 1 9 49 AM '88
MOTOR OPERAT UNIT

Counterpart - May 21st

Also enclosed is a Lease Amendment dated March, 1988. Please file this document as a supplement "A" to the above lease agreement.

The filing fee of \$26 is enclosed. Thank you.

Sincerely,

Mary A Oster

Mary Ann Oster
Research Consultant

Enclosures

RECORDATION NO. 1 5664

JUN 1 1988 9 48 AM

INTERSTATE COMMERCE COMMISSION

MEMORANDUM OF
RAILCAR OPERATING LEASE AGREEMENT

THIS MEMORANDUM OF Railcar Operating Lease Agreement is intended to evidence the Railcar Operating Lease Agreement dated as of February 5, 1985 (the "Lease") between Helm Financial Corporation, a California corporation (the "Lessor"), and Allied Corporation, a Delaware corporation (the "Lessee"), for the purpose of satisfying the requirements of recordation with the Interstate Commerce Commission under Section 49 of U.S.C. 11303. The Lessor is the owner of the Covered Hoppers more fully described in Annex A hereto (the "Cars"). The Lessee leased from the Lessor the Cars at the rentals and upon the terms and conditions provided in the Lease, attached hereto as Annex B.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to authority, have executed this Memorandum of Lease as of this 5th day of May, 1988.

LESSOR

HELM FINANCIAL CORPORATION

Attest:

John F. Davis
Title: VP. Finance

By:

Robert L. Davis
Title: EVERETT Vice President

LESSEE

ALLIED CORPORATION

Attest:

W. K. Hunzeker
Title: _____

By:

W. K. Hunzeker
Title: W. K. HUNZEKER
DIRECTOR
DIST. & PURCH.

ANNEX A
TO
MEMORANDUM OF RAILCAR OPERATING
LEASE AGREEMENT

<u>Equipment Description</u>	<u>Quantity</u>	<u>Car Markings</u>
4750 cubic foot alum-	5	HLMX 330
inum, 100 ton capacity,		333
triple pocket covered		339
hopper railcars built		344
in 1967 by Magor.		345

ANNEX B

RAILCAR OPERATING LEASE AGREEMENT

FEB 5 AM 10:49

THIS AGREEMENT, made and entered into as of this 5th day of February, 1985, by and between Helm Financial Corporation, a California corporation, hereinafter called "Lessor", and Allied Corporation, a Delaware corporation, hereinafter called "Lessee".

1. Equipment and Lease Charges: Lessor agrees to furnish to the Lessee, and the Lessee agrees to accept and use, upon the terms and conditions herein set forth, the following described railcars (hereafter "Cars"), for the use of each of which the Lessee agrees to pay Lessor the following lease charges (hereafter "Lease Charges"):

<u>Number of Cars</u>	<u>Description</u>	<u>Lease Charges</u>	<u>Car Markings</u>
5	4,750 cubic foot, aluminum, 100 ton capacity, triple pocket covered hopper railcars built in 1967 by Magor.	monthly lease rate per Car is	<div>HLMX 330</div> <div>333</div> <div>339</div> <div>344</div> <div>345</div>

Lease Charges shall become effective, with regard to each of the Cars, upon the date of the delivery of each as hereafter provided in Article 2, and shall continue in effect, with regard to each of the Cars, until returned to Lessor at the end of the term of this Agreement, as hereafter provided in Article 5. Payment of Lease Charges shall be made to Lessor at the address specified in Article 16, or to such other place as Lessor may direct, on the last day of each month in arrears, with the first month's payment due on the last day of the month following the month the last Car is delivered as provided in Article 2 below. Rent for any Car for any partial month shall be pro-rated on a daily basis. Lessee shall pay to Lessor as additional Lease Charges _____ per mile per Car for each mile a Car travels in excess of 78,000^{mi} miles during the term of this Agreement. Any costs incurred by Lessor in collecting Lease Charges wrongfully withheld by Lessee, including reasonable attorney fees, will be paid by Lessee.

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided in Articles 4, 6, and 9

below; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Car or damage to or loss of possession or loss of use or destruction of all or any of such Cars from whatever cause and of whatever duration, except as otherwise provided in Articles 4 and 6 below, or the prohibition of or other restriction against Lessee's use of all or any such Cars, or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee.

Lessor covenants that so long as Lessee is not in default hereunder, Lessee shall have and enjoy an unconditional right quietly to enjoy and use all Cars free from any disturbance or interruption of possession arising as a result of any action or inaction, failure of title, or conduct of or by Lessor, or of or by any assignee of its rights hereunder.

2. Delivery of Cars: Each Car will be delivered to Lessee free of transportation charge to Allied Corporation, Hopewell, VA, Norfolk and Western delivery. Lessor shall not be liable on account of any failure by it to deliver Cars to Lessee pursuant to this Agreement.

3. Warranties and Representation: LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE CARS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE CARS PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE CARS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY CAR.

4. Responsibility for Damage or Destruction of Cars: If any of the Cars are lost, destroyed, or damaged beyond economic repair in the opinion of Lessee (except when the car is in the possession of Lessor), Lessee agrees to pay Lessor the settlement value of the Car computed under Rule 107 of the Interchange Rules adopted by the Association of American Railroads (hereafter "A.A.R. Code of Rules") within 60 days of advising Lessor of such occurrence. Lease Charges with respect to any Car shall abate upon the date Lessor is advised that such Car has been lost, destroyed, or damaged beyond economic repair.

Upon payment by Lessee to Lessor of the settlement value of any Car as hereinabove provided, so long as Lessee is not in default hereunder, such Car and/or devices shall become the pro-

perty of the Lessee. In order to facilitate the sale or other disposition of any Car which becomes Lessee's property as hereinbefore provided, Lessor shall, upon request of Lessee, execute and deliver to Lessee or to Lessee's vendee, assignee or nominee, a bill of sale for such Car, warranting title free and clear of all liens, security interests, and other encumbrances (except such as may have arisen by, through or under Lessee during the term of this Agreement) and such other documents as may be required to release such Car from the terms and scope of this Agreement and from any other lien or encumbrance of Lessor's making, undertaking or sufferance, in such forms as may be reasonably required by the Lessee.

5. Return of Cars: The Lessee agrees, immediately upon the expiration or termination of this Agreement without demand by Lessor, to return each of the Cars to Lessor uncontaminated and in the same condition as received, less reasonable wear and tear, and free of liens arising by, through or under Lessee, at a point mutually agreed to, and to pay rent on each Car until such return. Rent for each Car shall cease when all cars are returned in the above condition to the point referenced above, or are placed in storage at the request of Lessor as stipulated below. Lessee shall provide up to ninety (90) days free storage for all or less than all Cars at the request of the Lessor at the expiration or termination of this Agreement. At Lessor's request, Lessee agrees to transport the Cars free of charge to any point on the tracks within 1,000 miles of Hopewell, VA.

6. Maintenance: Lessor agrees to maintain at its own expense each of the Cars in good condition and repair, in conformity with all applicable laws and regulations including the A.A.R. Code of Rules and FRA Railroad Freight Car Safety Standards except for the following:

(a) Repairs or maintenance required as a result of damage caused by the Lessee, its agents, representatives, customers or independent contractors or any third party; or

(b) Repairs or maintenance required because of damage caused to the Cars by any corrosive or abrasive substance loaded therein or used in connection therewith; or

(c) Repairs or maintenance required because of damage caused to the Cars by open flames, vibrators, sledges or other similar devices during loading or unloading operations; or

(d) Repairs or maintenance required because of excessive or unbalanced loading.

Lessee will make the Cars available to Lessor or its contractors at any facility specified by Lessor at any reasonable time on request for the purpose of maintenance inspection and to ensure

regular maintenance or repairs. Lessee shall pay all transportation charges for moving any Car to the repair or inspection facility designated by Lessor. Rent shall abate for any Car requiring repairs or inspection as of the date the Car is delivered to the repair or inspection facility designated by Lessor; rent shall resume as of the date that such Car is returned to the Lessee in serviceable condition.

In the case of damage caused to any of the Cars which is the responsibility of a railroad under AAR Rules and not repaired by such railroad, Lessor will perform the necessary repairs and will prepare and submit such documents as are necessary to recover the cost of such repair in accordance with AAR Rules and will perform all necessary administrative tasks in connection with such counterbilling. Lessor will be solely entitled to any sum so recovered.

Lessee will, at Lessor's request, take such reasonable action as Lessor may specify to modify operating conditions within Lessee's control which in Lessor's reasonable opinion are causing undue and avoidable wear or damage to the Cars.

Neither party to this Agreement will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Cars without the other party's written consent.

Lessor reserves the right to retire any car that in its sole opinion it deems uneconomical to repair. Lessee's obligation to pay rent shall abate for any Car retired by Lessor as of the date on which it is retired.

7. Freight and Other Charges: Lessor shall not be obligated for the payment of any switching, freight, or other charges incurred by the movement or the holding of the Cars, either loaded or empty, during the term of this Agreement, all of which will be paid by Lessee. Lessor shall have no right or claim to any per diem, demurrage or other Car hire charges arising out of the use of the Cars and all such charges, as applicable, shall belong and be payable to Lessee.

8. Lettering of Cars: Lessor will supply reporting marks for the Cars in accordance with the A.A.R. Code of Rules as indicated in Exhibit A. Lessee agrees to keep and maintain on the sides of each Car in letters not less than one-half inch in height the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION".

9. Responsibility for Taxes: Lessor agrees to pay any personal property taxes associated with the Cars. Lessee agrees to assume responsibility for, and to pay, all other taxes, costs, fines and assessments of every kind upon the Cars, and to file

all reports relating thereto; provided, however, that Lessee shall not be responsible for federal or state taxes based upon the income of Lessor.

10. Responsibility for Lading: Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Cars, however such loss or damage shall be caused, or shall result. The Lessee agrees to assume responsibility for, and to indemnify Lessor against, and to save it harmless from, any such loss or damage or claim therefor.

11. Indemnification: Lessee agrees to indemnify and save Lessor harmless from any and all claims, demands, causes of action, cost, and expenses, including attorney fees, arising directly or indirectly out of the use, custody, control, or operation of the Cars, whether in contract, tort, strict liability, or otherwise, ~~unless due to the acts or omissions of Lessor.~~ In any personal injury action(s) arising from the operation of said Cars naming Lessor as a defendant, Lessee agrees, except for losses caused by the acts or omissions of Lessor, if Lessor so requests, to undertake the defense and costs associated therewith immediately upon tender of said defense, including payment of any judgment directed against Lessor jointly or severally. Lessee also agrees to pay and indemnify Lessor from any and all penalties, fines, and levies arising from the operation of said Cars under this Agreement. Lessee's obligations hereunder shall survive the termination of this Agreement.

12. Assignment: Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Agreement. Except as herein provided, Lessee will not assign, transfer, encumber or otherwise dispose of this lease, the Cars or any part thereof, or sublet any Car without the prior written consent of Lessor. Lessee will not permit or suffer any encumbrances or liens to be entered or levied upon any Car, other than such as may arise by, through, or under Lessor or any assignee of Lessor's rights hereunder.

Lessee acknowledges and understands that Lessor may, without notice to Lessee, assign its interest under this Agreement and in and to the Cars to a bank or other lending institution as security for one or more loans. Lessee agrees, in the event of any such assignment and upon notice thereof from Lessor, and only in the event of such assignment to one or more such assignees: (i) to recognize such assignment; (ii) to make all payments of Lease Charges and other amounts due under the Agreement as so assigned directly to the assignee identified in such notice or to its designee; (iii) to accept the directions or demands of such assignee in place of those of the Lessor; (iv) to surrender the Cars to such assignee upon termination of this Agreement; (v) that, in the event of such assignment and except as otherwise provided in Articles 4, 5, 6, or 9, Lessee's

obligations hereunder with respect to payment of Lease Charges shall not be subject to any reduction, abatement, defense, set-off, counter-claim or recoupment for any reason whatsoever; (vi) except as otherwise provided in Articles 2, 4 (with respect to any Car which becomes Lessee's property), 5, 6, and Article 14, not to terminate this Agreement; provided, however, nothing contained in this Article 12 shall relieve Lessor from its obligations to Lessee hereunder, nor shall any assignee hereof be relieved of the obligation to release its interests in any Car to facilitate Lessor's obligations contained in the second paragraph of Article 4 hereof.

13. Remedies: If the Lessee after five business days notice shall fail to carry out and perform any of the obligations on its part to be performed under this Agreement, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to repossess the Cars, to remove the Cars from the Lessee's service, to terminate this Agreement, and recover any and all damages sustained as a result of Lessee's fault. If Lessor shall terminate this Agreement pursuant to this Article 13, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given to Lessor shall in no way limit its other rights and remedies given or provided by law or in equity. If Lessor after five (5) business days' notice shall fail to carry out and perform any of the obligations on its part to be performed under this Agreement, or if petition in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessor, then, and in any of said events, Lessee shall have the right to immediately terminate this Agreement and Lease Charges hereunder shall cease. If Lessee shall terminate this Agreement pursuant to this Article 13, the rights and remedies herein given to Lessee shall in no way limit its other rights or remedies given or provided by law or in equity.

14. Term of Agreement: This Agreement shall remain in full force and effect, with regard to each of the Cars, for a period of thirty-six (36) months from the average date of delivery of all of the Cars. Lessor shall advise Lessee of the average date of delivery of all of the Cars. The Agreement shall be binding upon and inure to the legal representatives and successors.

15. OT5 Authority: Lessee will, before delivery of any Car, obtain any permission or authority which may be necessary for the operation of the Cars under AAR Circular OT5 and will maintain any OT5 permission in force throughout the term of this Agreement.

16. Notice: Any notice to be given under this Agreement

shall be given by certified mail in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

Fibers and Plastics Company
P.O. Box 131
Hopewell, VA 23860
Attention: Roy Mastro

(b) Notices from Lessee to Lessor shall be sent to:

Helm Financial Corporation
One Embarcadero Center
San Francisco, CA 94111
Attention: President

17. Execution: This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract. This Agreement may be signed in separate counterparts as long as each party hereto shall have signed at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered that day and year first above written.

LESSOR:

ATTEST: [Signature]

Helm Financial Corporation

By: [Signature]

Title: PRES

Date: 3/29/85

LESSEE:

ATTEST: [Signature]

Allied Corporation

By: [Signature]

Title: Dir. Dist. and Purch.

Date: 3/4/85